

Remarks/Arguments:

Claims 1, 3-13 and 17-19 are pending and stand rejected.

Provisional Rejection of Claims 1, 3-13 and 17-19 Under the Judicially Created Ground of Nonstatutory Obviousness-Type Double Patenting

In the Office Action, at item 3, claims 1, 3-13 and 17-19 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5, 6 and 9-20 of co-pending application No. 10/725,929.

This rejection is respectfully traversed, as being improper. Because the provisional obvious-type double patenting rejection is the only rejection of the claim in the present application, and the co-pending application No. 10/725,929 has not issued as a patent, Applicant submits that the provisional rejection is improper. This is because, as stated in MPEP § 804(I)(B), "the 'provisional' double patenting rejection should be made by the Examiner in each application as long as there are conflicting claims in more than one application unless the 'provisional' double patenting rejection is the only rejection remaining in one of the applications. If the 'provisional' double patenting rejection in one application is the only remaining in that application, the Examiner should then withdraw the rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." (See MPEP 800-17.)

Accordingly, it is submitted that the provisional obvious-type double patenting rejection is improper and should be withdrawn.

Application No.: 10/725,930
Amendment Dated: October 11, 2007
Reply to Office Action of: July 20, 2007

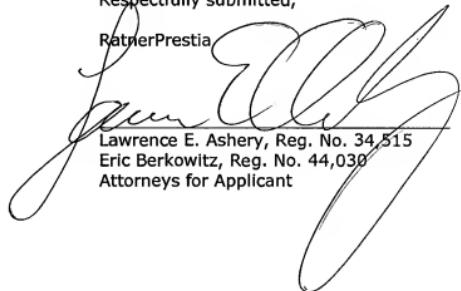
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Conclusion

In view of the remarks, Applicant submits the application in condition for allowance, which action is respectfully requested.

Respectfully submitted,

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